IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO. 83 OF 2001

IN

CHAMBER SUMMONS NO. 1395 OF 2000

IN

SUIT NO. 4089 OF 2000

Devji Ravji Patel, H.U.F.
through its Manager and Karta
Kantilal Bhuralal alias Devji Ravji Patel... Appellant
(Orig.Plaintiff

Versus

Narmada Agro Industries Ltd. .... Respondent
(Org. Defendant)

Mr. Girish Desai i/b. J.M. Shah for the appellant.
Mr. Y.S.Jahagirdar with R.M.Pardiwala i/b. Mulla &
Mulla & Craigie Blunt & Caroe for Respondent.

CORAM: D.K.DESHMUKH &
J.H.BHATIA,JJ.
DATE : 13th August, 2007.

P.C.

1. By this Appeal, the appellant challenges the order passed by the learned Single Judge of this Court dated 18th December,2000 in Chamber Summons No.1395 of 2000. That Chamber Summons was taken out by the defendant. The present appellant is the plaintiff. He had filed Civil Suit, being Civil Suit No.4089 of 2000. The only final relief claimed in the suit is claimed in terms of prayer clause (a). It reads as under :-

> "a) The Defendant be ordered and decreed to have specific performance of the said agreement dt.23rd day of December 1996 by completing the sale of the said land in favour of the Plaintiff and do all the necessary acts and deeds to complete the sale of the said land described in Schedule Ex."A" hereto in favour of the plaintiff and to carry out all presale formalities viz. to obtain 230A certificate of the Income tax Act in respect of the conveyance to be executed by the Defendant in favour of the Plaintiff and to do all the acts and deeds incidental thereto, to hand over the original documents in respect of the said land to the Plaintiff and to confirm that the Plaintiff is in possession of the said land."

Perusal of the prayer clause shows that the plaintiff is

claiming decree of specific performance of the agreement dated 23rd December, 1996. That agreement is in relation to the land which, admittedly, is not within the Original Jurisdiction of this Court.

2. The plaintiff, therefore, took out a petition for leave under Clause XII of the Letters Patent. That leave was granted in favour of the plaintiff. The defendant took out a Chamber Summons, being Chamber Summons No.1395 of 2000 for revocation of that leave. The learned Single Judge of this Court by his Judgment dated 18th December, 2000 granted the Chamber Summons and revoked the leave granted under Clause XII of the Letters Patent.

3. The learned Counsel appearing for the appellant-plaintiff submits that in the suit, the plaintiff has not prayed for a decree of possession of the land. He has only asked for a decree of specific performance of the agreement to sell the land. The learned Counsel, therefore, submits that his case is completely covered by the Judgment of the Supreme Court in the case of **Adcon Electronics Pvt.Ltd. vs. Daulat and another**, reported in (2001) 7 SCC 698. The learned Counsel further submits that the plaintiff is seeking leave of the Court to delete the last sentence in prayer clause (a) which reads as under :-

"and to confirm that the Plaintiff is in possession of the said land."

According to the learned Counsel, the suit of the plaintiff is only for a decree of specific performance of the agreement and no decree of possession is claimed.

4. We have heard learned Counsel appearing for the defendant.

5. Perusal of the prayer clause (a), quoted above, shows that the only decree the plaintiff is seeking in the suit is the decree of specific performance of the agreement dated 23rd December, 1996. Though he had also claimed for decree of confirmation of his possession of the land, now he has deleted that sentence from the prayer clause. Therefore, now the suit is only for decree of specific performance of the agreement to sell dated 23rd December, 1996. Perusal of the Judgment of the Supreme Court shows that the Supreme Court has held that when a suit is filed for a decree of specific performance of the agreement with no prayer for decree of possession of the land, the suit cannot be termed as suit for land for the purpose of Clause XII of the Letters Patent. Perusal of the Judgment of the learned

Single Judge shows that the learned Single Judge has held that the suit is a suit for land within the meaning of clause XII of the Letters Patent and as admittedly the land is outside the original jurisdiction of this Court, the leave was revoked. In our opinion, the observations of the Supreme Court in para 15 of the Judgment in the case of Adcon Electronics, referred to above, are relevant. Para 15 reads as under :-

> "15. From the above discussion it follows that a "suit for land" is a suit in which the relief claimed relates to title to or delivery of possession of land or immovable property. Whether a suit is a "suit for land" or not has to be determined on the averments in the plaint with reference to the reliefs claimed therein; where the relief relates to adjudication of title to land or immovable property or delivery of possession of the land or immovable property, it will be a "suit for land". We are in respectful agreement with the view expression by Mahajan, J. in Moolji Jaitha case."

It is clear from the above quoted paragraph from the Judgment of the Supreme Court that a suit in which plaintiff is claiming only decree of specific performance of the agreement, the suit cannot be termed

as suit for land for the purpose of Clause XII of the Letters Patent. Therefore, the learned Single Judge was not justified in revoking the leave granted under Clause XII of the Letters Patent.

6. In the result, therefore, the Appeal succeeds and is allowed. The order impugned in the Appeal is set aside.

7. The plaintiff is granted leave to amend prayer clause (a) as per the statement of the Advocate for the appellant referred to above. Four weeks time is granted to carry out the amendment in prayer clause (a) of the plaint.

8. In view of the order in Appeal, the Notice of Motion No.251 of 2001 stands disposed of.

--

(D.K.DESHMUKH,J.)

(J.H.BHATIA,J.)